



COUR EUROPÉENNE DES DROITS DE L'HOMME  
EUROPEAN COURT OF HUMAN RIGHTS

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 13508/07  
by A.J.  
against Sweden

The European Court of Human Rights (Third Section), sitting on 8 July 2008 as a Chamber composed of:

Josep Casadevall, *President*,  
Elisabet Fura-Sandström,  
Corneliu Bîrsan,  
Boštjan M. Zupančič,  
Alvina Gyulumyan,  
Egbert Myjer,  
Ineta Ziemele, *judges*,

and Santiago Quesada, *Section Registrar*,

Having regard to the above application lodged on 27 March 2007,

Having regard to the interim measure indicated to the respondent Government under Rule 39 of the Rules of and the fact that this interim measure has been complied with,

Having regard to the decision to grant priority to the above application under Rule 41 of the Rules of Court,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant is a Moroccan national who was born in 1979 and is currently in Sweden. He was represented before the Court by Mr A.-H.

Alami, a lawyer practising in Stockholm. The Swedish Government (“the Government”) were represented by their Agent, Mr C. H. Ehrenkrona, of the Ministry for Foreign Affairs.

#### **A. The circumstances of the case**

2. The facts of the case, as submitted by the parties, may be summarised as follows.

##### *1. Background and proceedings before the national authorities*

3. On 23 October 2002 the applicant entered Sweden and, on the following day, he applied to the Migration Board (*Migrationsverket*) for asylum and a residence permit. A first interview was scheduled in order to establish the grounds for the applicant’s request for asylum but he did not appear for this meeting. The Migration Board then called him to a new interview on 25 July 2003 which he attended. At the interview, the applicant claimed that he did not know where he had been born or raised and that he had never held a passport or an identification card. He did not know the whereabouts of his parents either but stated that he had been working as a shepherd in Western Sahara (a region under Moroccan authority). A friend, who had “felt sorry for him” and had wanted to give him the possibility of a better life, had helped him to leave his home country.

4. A language analysis, carried out in October 2003, showed that the applicant had tried to conceal his real dialect but that it still appeared from the test that he came from Morocco. He did not attend any further meetings with the Migration Board or his legal representative, despite being called repeatedly.

5. In April 2004 the Swedish Security Police (*Säkerhetspolisen*), in a submission to the Migration Board, stated that they had certain information about the applicant which indicated that he could become involved in activities that threatened the security of the nation.

6. On 9 November 2005 the Migration Board rejected the applicant’s application, essentially because he had failed to participate in the asylum investigation and had not stated that he risked being persecuted or harassed in his home country. Thus, the Board concluded that the applicant himself did not feel that he was in need of protection in Sweden. Since the applicant had disappeared, the decision could not be communicated to him.

7. In August 2006 the applicant was apprehended by the Austrian police when he tried to enter the country with a fake French passport and holding an airplane ticket to Syria. He had tried to conceal his identity by giving two other names, different from that given to the Swedish authorities, to the Austrian authorities but they had discovered this. Consequently, in accordance with the Dublin Convention, the applicant was accepted back in Sweden on 9 November 2006 and placed in custody since he had absconded

once before and thus there was a risk that he would try to evade enforcement of a decision on deportation. Moreover, he was informed of the Migration Board's negative decision in regard to his asylum request lodged in October 2002.

8. On 20 November 2006 he lodged a new application for asylum and a residence permit with the Migration Board, alleging that since he was from Western Sahara and had left the country illegally, the Moroccan authorities would automatically assume that he was part of the *Polisario Front* (an armed, political organisation which fights for the independence of Western Sahara from Morocco) and therefore arrest and torture him. However, he specified that he had never been politically active or supported the *Polisario Front*. Moreover, he claimed that he should be considered as a refugee *sur place* since the Swedish Security Police had accused him of being involved in security-threatening activities and the Moroccan authorities surely knew about it and would arrest him on this basis as well.

9. The applicant was interviewed by the Migration Board on 22 November 2006 at which point he added, essentially, the following. He had not been raised by his parents and he did not know from which country he hailed but he was a citizen of Polisario, which should be understood as Western Sahara. He had no passport or identity documents. His foster father had wanted him to join the *Polisario Front* but he had not wanted this himself. He had not had any contact with the Moroccan authorities. While in Sweden, he had had no choice but to live with people that the Swedish Security Police held under surveillance since he had had nowhere else to live. When he had been apprehended in Austria, he had been on his way to work in Spain. The fact that his ticket was to Syria was a mistake. If forced to return to Morocco, he would risk being imprisoned because he was from Western Sahara and because of the people he had socialised with while in Sweden.

10. In a submission from the applicant's representative, dated 27 November 2006, he stressed that the applicant was not a member of the *Polisario Front*. However, since he had left Western Sahara illegally without any travel documents, this was enough for the Moroccan authorities to consider him a member of the *Polisario Front*. Moreover, he refuted the Swedish Security Police's allegations that he was a security threat to Sweden as groundless.

11. On 4 December 2006 the Migration Board rejected the application. It first noted that the applicant had provided no evidence to support either his identity or any of his grounds for asylum but that the language analysis had shown that he came from Morocco. It then noted that the Security Police had maintained their earlier submission to the Board and, in a new submission of 25 October 2006, had recommended that the applicant should not be allowed to remain in Sweden because they considered that he posed a security risk to the nation. The Board then observed that the situation in

Western Sahara was unstable due to the conflict with the Moroccan authorities but that the situation in itself was not so serious that it could justify granting a person asylum in Sweden. As concerned the applicant's situation, it found his allegations to be groundless. There was no indication that the Moroccan authorities would consider him a member of the *Polisario Front* or otherwise show any interest in him since there was nothing to suggest that the Moroccan authorities had knowledge of the Swedish Security Police's concerns. Moreover, it noted that the applicant himself had stated that he was not involved in any activities of a political, or other, nature. Having regard to the Security Police's submissions, which the Board did not question, and all the above considerations, the Board concluded that the applicant's request for asylum and a residence permit should be rejected.

12. The applicant appealed against the Migration Board's decision. Since the case involved national security matters, the Board transferred the appeal to the Migration Court of Appeal (*Migrationsöverdomstolen*) in order for that court to give its opinion on whether there were any impediments to the enforcement of the deportation order before the case, together with the court's opinion, were passed on to the Government for examination (see below under relevant domestic law and practice, § 29).

13. Before the Migration Court of Appeal, the applicant maintained his earlier claims and added that he believed that the Swedish Security Police had informed their Moroccan counterpart, in accordance with international obligations, about him and their suspicions about him. Moreover, in March 2004, he and a friend had been arrested by the police in a mosque in Stockholm. He had been questioned but released later the same day and no charges had been brought against him. However, he was convinced that the Moroccan security police had been in the mosque at the time of the arrest and therefore would immediately detain and question him if he were deported to Morocco.

14. On 26 January 2007 the Migration Court of Appeal held an oral hearing in the case and, on 2 February 2007, it submitted its opinion on the matter to the Government for them to examine the case and make a final decision. In its submission, the court recommended that the applicant should not be granted leave to remain in Sweden and that he should, moreover, be prohibited from returning within the next ten years. It noted, *inter alia*, that there was nothing to suggest that the Moroccan authorities would show any interest in him and that the applicant himself had stated that he had never been politically active. It also considered that he was very unreliable and questioned the veracity of his accounts as his story had escalated over time. Thus, the court was of the opinion that the applicant was not in need of protection in Sweden, either as a refugee or as a person otherwise in need of protection. Furthermore, it presumed that the Swedish Security Police had

not, and would not, handle the case in such a way that it would render the enforcement of the deportation order impossible.

The applicant disputed the Migration Court of Appeal's opinion and maintained his claims. He further added that court had not taken into consideration his connection to one of the persons he had socialised with in Sweden and that the Migration Board and the Swedish Security Police could not guarantee his safety in Morocco, if he were returned.

15. On 22 March 2007 the Government rejected the appeal and decided that he should be deported to Morocco as soon as possible and with a prohibition on returning to Sweden before 22 March 2017. They first noted that they did not question the Security Police's information that the applicant could become involved in activities threatening the security of the nation. They then considered that he was not credible and that there was no indication that he would risk persecution or torture by the Moroccan authorities upon return. Therefore there were no grounds on which to consider him a refugee or otherwise in need of protection and no other reasons to grant him leave to remain in Sweden had been established. Having regard to the submission made by the Swedish Security Police, the Government also decided to prohibit the applicant from returning to Sweden for ten years. This decision was final.

16. Subsequently, the applicant applied to the Migration Board for a re-examination of his application for asylum and a residence permit on the grounds that new circumstances had come to light which rendered an enforcement of the deportation order impossible. However, on 4 April 2007, the Migration Board found that no new circumstances had been presented and that the deportation order could be enforced. The applicant did not appeal against this decision.

*2. Application of Rule 39 of the Rules of Court and further developments in the case*

17. In the meantime, on 27 March 2007, the applicant requested the Court to indicate to the Swedish Government under Rule 39 of the Rules of Court a suspension of his deportation to Morocco. On the following day, 28 March 2007, the Court decided to apply Rule 39 and to suspend the deportation until 10 April 2007, on which date it was extended until further notice and the case communicated to the Swedish Government.

18. Following the request by the Court, the Migration Board stayed the enforcement of the deportation order until further notice.

19. In a letter of 20 June 2007 the Government informed the Court that new information had come to light in the case which might constitute an impediment to the enforcement of the deportation order.

20. Consequently, in accordance with the relevant rules in the Aliens Act, on 29 June 2007, the Migration Board handed the case over to the Government for examination since it considered that, due to certain new

information presented in an internal note by a civil servant at the Ministry of Justice, there appeared to be an impediment to the enforcement of the deportation order in the applicant's case. In its view, there was now adequate reason (*skälig anledning*) to believe that the applicant would risk being tortured if returned to his home country. It noted that although the human rights situation in the country had improved and some police officers had been convicted for having committed torture, allegations of torture and impunity remained.

21. The Government requested the Migration Court of Appeal to submit its opinion on the case, which it did on 10 August 2007, after having held an oral hearing where the applicant and his representative were present as well as representatives for the Migration Board and the Security Police. In its opinion, the court stated that there were no impediments to the enforcement of the deportation of the applicant since it was not probable that the Moroccan authorities had an interest in the applicant and he therefore did not risk torture or inhuman treatment.

22. The applicant submitted in reply that the Migration Court of Appeal's opinion was incorrect and that the Swedish Government could not guarantee his safety in Morocco. He further submitted a copy of a newspaper article about him in which his name was mentioned and there was a photo of him. The article had been published in the daily newspaper *Svenska Dagbladet* on 18 August 2007 and included the following information. The applicant claimed that he had never been interested in politics and that he hoped that the Swedish authorities would believe his assurances that he was not a terrorist. He had left Western Sahara, where he had grown up, because the *Polisario Front* had wanted him to join as a soldier but he had refused. In the article it was further stated that the main reason that the applicant was regarded as a security risk in Sweden, allegedly was that he had socialised with another person, X., who was suspected of having ties to Al-Qaida in Iraq and who had led a group of extremists from an apartment in Stockholm. The applicant claimed that he had needed a cheap place to sleep when he arrived in Stockholm and that X. had offered him a room in his apartment. However, they had never discussed politics and the applicant had moved out as soon as he had started working. However, while he was living in the apartment, he and X. had been awoken one morning by the Security Police who had detained and questioned them for half a day before they had been released. According to the applicant, the Security Police had focused on questioning him about X. He further stated that if he had seen anything suspicious, he would have told the police since he had come to Sweden for protection and therefore also wanted to protect Sweden.

23. On 19 September 2007 the Government decided that there were no impediments to the enforcement of the deportation order. Although some new information had come to light, these circumstances were not such as to

render the deportation of the applicant unenforceable. Moreover, the fact that the applicant himself had chosen to make public his name and photo in one Swedish media after the Migration Court of Appeal had submitted its opinion to the Government, did not alter the Government's conclusion in the matter. Finally, the Government reiterated that the enforcement of the deportation order was still suspended due to the Court's request under Rule 39 of the Rules of Court.

## **B. Relevant domestic law and practice**

24. The basic provisions mainly applied in the present case, concerning the right of aliens to enter and to remain in Sweden are laid down in the 2005 Aliens Act (*Utlänningslagen*, 2005:716 – hereafter referred to as “the 2005 Act”) which replaced, on 31 March 2006, the old Aliens Act (*Utlänningslagen*, 1989:529).

25. Chapter 5, Section 1 of the 2005 Act stipulates that an alien who is considered to be a refugee or otherwise in need of protection is, with certain exceptions, entitled to a residence permit in Sweden. According to Chapter 4, Section 1 of the 2005 Act, the term “refugee” refers to an alien who is outside the country of his or her nationality owing to a well-founded fear of being persecuted on grounds of race, nationality, religious or political beliefs, or on grounds of gender, sexual orientation or other membership of a particular social group, and who is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country. This applies irrespective of whether the persecution is at the hands of the authorities of the country or if those authorities cannot be expected to offer protection against persecution by private individuals. By “an alien otherwise in need of protection” is meant, *inter alia*, a person who has left the country of his or her nationality because of a well-founded fear of being sentenced to death or receiving corporal punishment, or of being subjected to torture or other inhuman or degrading treatment or punishment (Chapter 4, Section 2).

26. As regards the enforcement of a deportation or expulsion order, account has to be taken of the risk of capital punishment or torture and other inhuman or degrading treatment or punishment. According to a special provision on impediments to enforcement, an alien must not be sent to a country where there are reasonable grounds for believing that he or she would be in danger of suffering capital or corporal punishment or of being subjected to torture or other inhuman or degrading treatment or punishment (Chapter 12, Section 1). In addition, an alien must not, in principle, be sent to a country where he or she risks persecution (Chapter 12, Section 2).

27. Under certain conditions, an alien may be granted a residence permit even if a deportation or expulsion order has gained legal force. This applies, under Chapter 12, Section 18, where new circumstances have emerged that

mean there are reasonable grounds for believing, *inter alia*, that an enforcement would put the alien in danger of being subjected to capital or corporal punishment, torture or other inhuman or degrading treatment or punishment or there are medical or other special reasons why the order should not be enforced. If a residence permit cannot be granted under this provision, the Migration Board may instead decide to re-examine the matter. Such a re-examination shall be carried out where it may be assumed, on the basis of new circumstances invoked by the alien, that there are lasting impediments to enforcement of the nature referred to in Chapter 12, Sections 1 and 2, and these circumstances could not have been invoked previously or the alien shows that he or she has a valid excuse for not doing so. Should the applicable conditions not have been met, the Migration Board shall decide not to grant a re-examination (Chapter 12, Section 19).

28. A refugee or an alien otherwise in need of protection may be refused a residence permit in certain cases. Such a decision may be taken if there are *exceptional grounds* for not granting a residence permit, either following an assessment of what is known about the alien's previous activities or with regard to national security (Chapter 5, Section 1, paragraph 2, points 1 and 2). However, it follows from Chapter 8, Section 17 of the 2005 Act that no person at risk of being tortured may be refused a residence permit.

29. Under the 2005 Act, matters concerning the right of aliens to enter and remain in Sweden are dealt with by three instances; the Migration Board, the Migration Court and the Migration Court of Appeal (Chapter 14, Section 3 and Chapter 16, Section 9 of the 2005 Act). However, in a so called security case (defined in Chapter 1, Section 7, as a case in which the Swedish Security Police, for reasons relating to national security or otherwise bearing on public security, recommend that an alien be deported or expelled, or that his or her application for a residence permit should be rejected or that an alien's residence permit be withdrawn), a decision of the Migration Board on deportation, expulsion, a residence permit or a work permit may not be appealed against to the Migration Courts, but may instead be appealed against to the Government (Chapter 14, Section 11). The Migration Board shall promptly turn over an appeal of such a decision to the Migration Court of Appeal. This court shall, if it is not clearly unnecessary, hold an oral hearing in the case and shall then pass on the case, along with its opinion, to the Government for examination. The opinion shall specifically state whether there is an impediment to enforcement under Chapter 12, Section 1, 2 or 3. If the Migration Court of Appeal finds that there is such an impediment, the Government may not diverge from the assessment of the Migration Court of Appeal in its examination (Chapter 14, Section 12). If, during the enforcement of a deportation or expulsion order in a security case, information comes to light that might constitute an impediment to the enforcement of that order, the Migration



Board shall also promptly turn the case over to the Government, after which the above procedure applies (Chapter 12, Section 20, paragraph 2).

30. The Swedish Security Police may only recommend that an alien be deported or expelled, or that his or her application for a residence permit should be rejected for reasons relating to national security or otherwise bearing on public security. This recommendation is only decisive for defining the case as a security case. The decision to deport or to reject an application for a residence permit for reasons relating to national security or otherwise bearing on public security lies with the Migration Board and, ultimately, with the Government.

### **C. Relevant international background material on Morocco<sup>1</sup>**

31. Moroccan law prohibits torture and the Government denied its use. In March 2006 a specific anti-torture law was passed, which has clear classification of the crimes in line with relevant UN conventions. Moreover, the penal code stipulates sentences of up to life imprisonment for public servants who use, or allow the use of, violence against others in the exercise of their official duties. Furthermore, by law, pre-trial investigating judges must refer a detainee to a forensic medicine expert if asked to do so or if judges notice suspicious physical marks on a detainee. Still, according to domestic and international human right organisations, prisoners and detainees, members of the security forces abused individuals in their custody. According to the Moroccan Minister of Justice, during 2007, authorities prosecuted 17 members of the security forces for human rights violations, including torture, and two officers were convicted and sentenced to ten years' imprisonment for beating to death a Western Saharan activist in 2005.

32. The law does not prohibit arbitrary arrest or detention. According to international sources, the police used both practices and the authorities denied defendants access to counsel or family members during the initial 96 hours of detention, during which police interrogated detainees and abuse or torture was most likely to occur. Under the anti-terrorism law, enacted in the aftermath of the 2003 Casablanca bombings, the authorities have the power to detain a person for up to 12 days without notifying a lawyer or the detainee's family. Detention limits were exceeded when individuals were suspected of terrorism or were linked to terrorism.

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<sup>1</sup> The US Department of State, *Morocco, Country Reports on Human Rights Practices, 2007*, released on 11 March 2008, and *Country Reports on Terrorism, Morocco*, released on 30 April 2008; Amnesty International Report 2008, *Morocco and Western Sahara*; Human Rights Watch, *Country Report Morocco/Western Sahara*, January 2008; The Swedish Ministry for Foreign Affairs, *Mänskliga rättigheter i Marocko 2007* and *Mänskliga rättigheter i Västsahara 2007*.

33. The constitution provides for an independent judiciary. However, it appears from available sources that in practice the courts were not always independent and corruption remained prevalent. The law also stipulates that when a criminal penalty is more than five years in prison, a court-appointed attorney must be provided, if a defendant cannot afford private counsel. Furthermore, if a judge determines that a confession was obtained under duress, the law requires that it be excluded from evidence. However, human rights organisations claimed that judges often decided cases on the basis of forced confessions, especially in cases of Islamists accused of terrorism or in the cases of some Sahrawis (people from the region of Western Sahara).

34. The Moroccan Government permitted visits to prisons during the year by independent human rights observers and, throughout 2007, they also permitted the Moroccan Observatory of Prisons (an NGO that receives limited government funding) to visit prisons and detention centres unhindered to observe conditions and hear complaints. Moreover, individuals could complain of human rights abuses to the *Conseil Consultatif des Droits de l'Homme* (the CCDH), which was also done without problems. The CCDH presented regular reports on the country's human rights situation.

35. The Government provided increased human rights training to prison officials, military officers, police and medical personnel. The authorities did not hamper foreign human rights organisations visiting Morocco and they generally tolerated the work of many national human rights organisations. Amnesty International opened its first office in Morocco in 1998 and has since then opened several more offices in the country.

36. Several of the sources noted that despite the clear efforts to improve the human rights situation in Morocco and strengthen the democratic process, the fight against terrorism risked having a negative impact on respect for human rights in Morocco. Since August 2006, police have arrested at least 500 suspected Islamist militants and, according to Human Rights Watch, the intelligence agencies have continued to use an unacknowledged detention centre at Temara to interrogate some of those suspected of serious offences. Suspects continued to allege that they had been tortured while under interrogation, although there were fewer complaints of torture and excessive incommunicado pre-arraignment detention in 2007 than in the immediate aftermath of the 2003 Casablanca bombings. Moreover, during 2007, law enforcement efforts focused more narrowly on counter terrorism investigations and arrests than the previous broad dragnets used following the 2003 Casablanca attacks. Still, according to the Association *El Nacir* (an NGO which advocates on behalf of jailed Islamists) an estimated 200 individuals remained in custody without charge at the end of 2007, as a result of terror-related dragnets. Amnesty International has reported that more than 100 suspected Islamist militants were arrested, mostly by police, and that most of the detainees were charged

and some were tried on terrorism offences and sentenced to up to 15 years in prison.

37. The Moroccan authorities kept particularly tight control over the disputed Western Sahara region, resulting in many reports of police brutality, including torture. UN-mediated talks concerning the region were held in 2007 between the Moroccan Government and the *Polisario Front* but without reaching an agreement. Amnesty International reported that hundreds of Sahrawi activists suspected of participating in demonstrations against Moroccan rule were arrested and dozens of them alleged that they had been tortured during questioning by security forces. Some were tried on charges of violent conduct while others were released after questioning. The Government encouraged the return of Sahrawis as long as they acknowledged the Government's claim to the Western Sahara territory. There were no restrictions on travelling within the country.

## COMPLAINTS

38. The applicant complained under Article 3 of the Convention that, if deported from Sweden to Morocco, he would face a real risk of being persecuted, tortured and imprisoned because the Moroccan authorities were aware that he was considered as a security threat in Sweden and because they would assume that he belonged to the *Polisario Front*. He further complained under Article 6 of the Convention that he had never been informed about the Security Police's specific accusations against him and that, therefore, he had not been able to defend himself properly before the authorities.

## THE LAW

### **A. The applicant's complaint under Article 3 of the Convention**

39. The applicant complained that his deportation to Morocco would violate his rights under Article 3 of the Convention which reads:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

### *1. The parties' submissions*

#### **(a) The Government**

40. The Government submitted that this complaint should be declared manifestly ill-founded.

41. Although they did not wish to underestimate the concerns which could legitimately be expressed with respect to the current human rights situation in Morocco, the Government considered that these could not, in themselves, suffice to establish that the forced return of the applicant to his home country would entail a violation of Article 3 of the Convention. It had to be shown that the applicant would be personally at risk of being subjected to treatment contrary to the said provision.

42. In this respect, they pointed out that the Swedish authorities apply the same kind of test when considering deportation under the Aliens Act as the Court will do when examining a subsequent complaint under Article 3 of the Convention. This was also true for so-called security cases, including the present one, as was apparent from the Migration Court of Appeal's opinion and the Government's decision. Hence, the Government contended that great weight had to be attached to these opinions and decisions and that they relied on them.

43. The Government considered that the applicant's credibility was very low having regard to his statements that he had no knowledge of his citizenship or from which region he originated. Moreover, he had presented no documents in support of his identity and he had tried to conceal his real dialect during the first asylum interview in 2003. More significantly, the Government observed that, during the first asylum proceedings, the applicant had offered no grounds for requesting asylum while, during the second asylum application, his story had escalated and he had invoked asylum grounds vis-à-vis Morocco. Furthermore, they referred to the fact that he had given two identities, both different from the one given in Sweden, when he had been apprehended at the airport in Vienna. He had also been in possession of a false passport. The applicant had offered no realistic explanation for the above. In any event, his accounts during both asylum proceedings had been vague and lacking in detail and he had even failed to attend several meetings to which he had been summoned, without offering any explanation at the time. Having regard to all of the above, the Government concluded that the applicant had tried to mislead the Swedish authorities right from the start and, hence, had not come to Sweden as a result of any real fear of persecution.

44. Turning to the applicant's claim that he would risk being arrested and tortured by the Moroccan authorities because they would assume that he belonged to the *Polisario Front* because he had left the country illegally and without travel documents, the Government observed that the applicant had not substantiated this claim. It was neither established that he had left the

country illegally nor that, even if he had, the Moroccan authorities would consider him a member of the *Polisario Front* on this sole fact.

45. The Government then contended that the mere fact that the applicant was considered a security threat in Sweden was not sufficient to put him at risk of being subjected to treatment contrary to Article 3 of the Convention if deported to Morocco. Moreover, the essential question was not that there had been contacts between Swedish and Moroccan authorities but the content of the information exchanged during these contacts. This issue had been examined by the Migration Court of Appeal on two occasions and, on both occasions, it had found that there were no impediments to the enforcement of the deportation order. They further argued that the fact that the applicant had chosen to go public with his story although facing deportation to Morocco demonstrated that he did not have any real fear of being subjected to treatment contrary to Article 3 if deported.

46. Furthermore, the Government stated that it was pertinent to clarify that, since the Swedish authorities had come to the conclusion that the applicant was neither a refugee, nor an alien otherwise in need of protection, his application for a residence permit had been rejected on these grounds. The fact that the applicant was considered to pose a security threat to Sweden only formed the basis for the Government's decision to prohibit him from returning to Sweden for ten years. The Swedish Security Police, being responsible for the applicant's deportation, were also bound by the provision in the Secrecy Act regarding the protection of an alien's personal circumstances.

47. Thus the Government concluded that the documentation and circumstances invoked by the applicant were not enough to show that there were substantial grounds for believing that he would face a real risk of treatment contrary to Article 3 of the Convention if returned to Morocco.

**(b) The applicant**

48. The applicant maintained that he faced a real risk of being imprisoned and tortured if he were forced to return to Morocco. Firstly, he claimed that the interpreter present at the first asylum interview in 2003 had been Palestinian and therefore had not fully understood him. Moreover, he had not attended the second interview because he had been too intimidated by the Swedish Security Police when they had brought him in for questioning in March 2004. He had left Sweden shortly after this incident and therefore had not had the chance to explain all his reasons for seeking asylum. In this respect, he stressed that he had not returned voluntarily to Sweden but had been returned by the Austrian Authorities.

49. Moreover, a language analysis had confirmed that he was from Morocco but could not specify the exact region. However, his representative, who himself originates from Morocco, confirmed that the applicant's dialect was from Western Sahara. Since he had a Western

Saharan dialect and no identification documents, the Moroccan authorities might suspect him of being a member of the *Polisario Front* and therefore persecute him.

50. In the applicant's view, the first opinion by the Migration Court of Appeal, dated 2 February 2007, was based on incorrect assumptions because the Security Police had withheld some information and the court therefore, wrongly, had assumed that the Security Police had processed the case in such a way as not to jeopardise the execution of the deportation order. He considered that the Government's contention that his deportation order was not founded on the basis of the Security Police's opinion that he posed a security threat to Sweden was clearly wrong. This was apparent from the Migration Board and the Government's decisions and the submissions by the Security Police to the authorities. In this respect, he stressed that the Migration Board, when transferring the case to the Government on 29 June 2007, had considered that there were impediments to the enforcement of the deportation order.

51. As concerned his decision to go public with his story, the applicant argued that this was a direct consequence of the migration authorities' reluctance to see the connection between him and X., the person who had been detained at the same time with him in March 2004. He alleged that X., a Swedish national of Moroccan origin, was wanted by the Moroccan authorities since March 2004 on suspicion of having been involved in the Madrid bombings and collaborating with Al-Qaida.

52. The applicant further contended that it was no longer relevant whether or not he had left Morocco illegally. What mattered was that he had no identity documents and how the Moroccan authorities would act on the basis of the information they had received about him. The Swedish Security Police had incriminated him for a serious crime without giving him the opportunity to take note of the accusations and defend himself. Having regard to all of the above, the applicant was convinced that he would be subjected to treatment contrary to Article 3 of the Convention if he were returned to his home country.

## *2. The Court's assessment*

53. The Court first observes that Contracting States have the right, as a matter of well-established international law and subject to their treaty obligations, including the Convention, to control the entry, residence and expulsion of aliens. However, the expulsion of an alien by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question, if deported, would face a real risk of being subjected to treatment contrary to Article 3 in the receiving country. In these circumstances, Article 3 implies the obligation not to deport the person in question to that country (see, among

other authorities, *Saadi v. Italy* [GC], no. 37201/06, §§ 124-125, ECHR 2008-...).

54. Whilst being aware of the reports of human rights violations in Morocco, as set out above, the Court does not find them to be of such a nature as to show, on their own, that there would be a violation of the Convention if the applicant were to return to that country. The Court has to establish whether the applicant's personal situation is such that his return to Morocco would contravene the relevant provisions of the Convention.

55. In this respect, it notes that the applicant has invoked two separate grounds for his fear of returning to his home country; firstly that the Moroccan authorities would assume that he belonged to the *Polisario Front* and, secondly, because they are aware that he is considered as a security threat in Sweden.

56. The Court acknowledges that, owing to the special situation in which asylum seekers often find themselves, it is frequently necessary to give them the benefit of the doubt when it comes to assessing the credibility of their statements and the documents submitted in support thereof. However, when information is presented which gives strong reasons to question the veracity of an asylum seeker's submissions, the individual must provide a satisfactory explanation for the alleged discrepancies (see, among other authorities, *Collins and Akasiebie v. Sweden* (dec.), no. 23944/05, 8 March 2007, and *Matsiukhina and Matsiukhin v. Sweden* (dec.), no. 31260/04, 21 June 2005). In principle, the applicant has to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to be implemented, he would be exposed to a real risk of being subjected to treatment contrary to Article 3 (see *N. v. Finland*, no. 38885/02, § 167, 26 July 2005). Where such evidence is adduced, it is for the Government to dispel any doubts about it.

57. In order to determine whether there is a risk of ill-treatment, the Court must examine the foreseeable consequences of sending the applicant to the receiving country, bearing in mind the general situation there and his personal circumstances (see *Vilvarajah and Others v. the United Kingdom*, judgment of 30 October 1991, Series A no. 215, § 108 *in fine*).

58. In the case before it, the Court cannot but note that the applicant, when he first arrived in Sweden in 2002, failed to appear for the first meeting with the Migration Board. When he subsequently attended an interview in July 2003, nine months after his arrival, he invoked no grounds for seeking asylum whatsoever and gave only very limited information about his background. In Court's view, the applicant's submission that he had not had a chance to explain all his reasons for seeking asylum since he left Sweden before the second interview, is not convincing since, during the first interview, he had the chance to present his reasons for requesting asylum and, at that point, only stated that he had left his home country

because a friend had felt sorry for him and therefore had helped him to leave.

59. The Court further observes that the applicant has at no point explained why he gave two different names and presented a fake French passport to the Austrian authorities when apprehended in Vienna in August 2006. Nor has he attempted to clarify why the ticket was for Syria if, as he has claimed, he was actually going to Spain. By failing to give any explanation for these unclear points, the Court finds it justified to call into question the applicant's credibility.

60. In this respect, it observes that the applicant has also failed to present any evidence in support of his allegations that he left Morocco illegally and that the Moroccan authorities would suspect him of belonging to the *Polisario Front*. Even assuming that the applicant originates from Western Sahara, the Court notes that, according to the international sources available, there is nothing to substantiate that the Moroccan authorities would persecute him on this single ground. This is further reinforced by the fact that the applicant has maintained all along that he has never been a member of the *Polisario Front*, that he has never been interested in politics and that he has never had any contact with the Moroccan authorities. In these circumstances, the Court finds it highly unlikely that the applicant, on this ground, would suffer treatment contrary to Article 3 of the Convention if deported to Morocco.

61. Turning to whether he would face a real risk of being subjected to ill-treatment or torture upon return to his home country because he is considered a security risk in Sweden, the Court makes the following evaluation. The Swedish Security Police, migration authorities and the Government consider the applicant to be a security threat in Sweden while the applicant has consistently held that he poses no such threat. The applicant fears that the Swedish Security Police have given such information to the Moroccan authorities that they will arrest and interrogate him if he is returned, and, in particular, that he will be ill-treated and tortured during the interrogation. The Government claim that this fear is unfounded and the Migration Court of Appeal has reached the same conclusion on both occasions that it has been consulted.

62. The Court first notes that the issue before it is not whether the applicant would be arrested and interrogated by the Moroccan authorities or not, since this would not, in itself, be in contravention of the Convention. Its concern is whether or not the applicant would be ill-treated or tortured, contrary to Article 3 of the Convention, upon return to his home country. In examining this matter, the Court observes that the human rights situation in Morocco has improved over the last couple of years. The country has enacted an anti-torture law and implemented measures to suppress the use of torture by the authorities. Police and members of the security forces who have been suspected of being involved in torture have been prosecuted and



some have been convicted and sentenced to long terms of imprisonment. Moreover, increased human rights training has been provided to police, military officers and prison officials and the Moroccan Government have permitted visits to prisons and detention centres by independent human rights observers and the Moroccan Observatory of Prisons. Still, allegations and reports of the occurrences of ill-treatment and torture by police and security forces have continued although there were fewer such complaints in 2007 than in the aftermath of the 2003 Casablanca bombings.

63. It appears from the above information that Morocco has taken significant steps towards improving the human rights situation in the country. In the Court's opinion, although ill-treatment and torture still occurs, it has not been established that it is routinely used during interrogation of individuals. Police and security forces are aware that it is prohibited and carries heavy penalties and there are both national and international organisations present to investigate and report on abuses.

64. Here, the Court reiterates that it is for the applicant to adduce evidence capable of proving that there are substantial grounds for believing that, if he were to be deported to Morocco, he would be exposed to a real risk of being subjected to treatment contrary to Article 3 (see above § 56). In this respect, it observes that the applicant has at no point been charged or tried for committing any crime in Sweden. When he was apprehended in March 2004, he was questioned by the police for a few hours and then released without any further measures being taken against him. The applicant has himself stated that the police mostly asked questions about X. since he had briefly rented a room in X.'s apartment. The Court further notes that the applicant has neither claimed that he is wanted by the Moroccan authorities nor that he has been charged with any crime in that country. However, he has stated that he has never had any contact with the Moroccan authorities and that he has never been politically active. Thus, the applicant has failed to submit anything substantial in support of his allegation that the Moroccan authorities would show a particular interest in him and that he would face a real risk of being ill-treated or tortured and, consequently, the Court finds that he has not substantiated his claim. In reaching this conclusion, the Court has taken into account the Government's submission that the Security Police, being responsible for the applicant's deportation, are bound by the provision in the Secrecy Act regarding the protection of an alien's personal circumstances.

65. Lastly, as concerns the applicant's choice to make public his name and photo in the Swedish media, the Court takes that as an indication that he apparently did not consider the risk of being deported and subjected to torture in Morocco to be so serious that he wanted to minimise that risk at all costs. In any event, the Court considers that the information provided in the article mainly highlighted the applicant's assurances that he was not a security risk to Sweden and just wanted to be allowed to remain in the

country. Thus, no information appeared in the article which would cause the Moroccan authorities to take a particular interest in the applicant, if indeed they were made aware of the existence of the article.

66. Having regard to the above and to all the material in the case-file, the Court concludes that the applicant has not established that there are substantial grounds for believing that he would be exposed to a real risk of being ill-treated or tortured, contrary to Article 3 of the Convention, if he were to be deported to Morocco. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

### **B. The applicant's complaint under Article 6 of the Convention**

67. The applicant further complained that he had not received a fair trial in Sweden in accordance with Article 6 § 1 of the Convention. In relevant parts this provision reads:

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”

68. The Court reiterates that Article 6 of the Convention does not apply to proceedings related to an asylum application, as they do not concern the determination of either civil rights and obligations or of any criminal charge (see *Maaouia v. France* [GC], no. 39652/98, § 40, ECHR 2000-X). Moreover, it notes that the applicant has not been charged with any criminal offence in Sweden. It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

69. Accordingly, it is appropriate to discontinue the application of Rule 39 of the Rules of Court.

For these reasons, the Court unanimously

*Declares* the application inadmissible.

Santiago Quesada  
Registrar

Josep Casadevall  
President